



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,972	03/24/2004	Tomasz Ondrusz	006422.00006	4460
28827 7590 07/21/2009 GABLE & GOTWALS 100 WEST FIFTH STREET, 10TH FLOOR TULSA, OK 74103				
EXAMINER				
FRISBY, KESHA				
ART UNIT		PAPER NUMBER		
3715				
MAIL DATE		DELIVERY MODE		
07/21/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/807,972

Applicant(s)

ONDRUSZ ET AL.

Examiner

KESHA FRISBY

Art Unit

3715

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 45-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

After the amendment was filed on 3/23/2009, claims 45-56 are pending. Claim 56 is newly added.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 45-49, 51, 52, 54 & 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. (U.S. Publication Number 2003/0027688) in view of Petrus (U.S. Patent Number 7.136.820) and Yoo (U.S. Publication Number 2003/0027688).

Referring to claim 45, Gordon et al. discloses first computer means for processing data (computer 110); wherein: each sports person using the system inputs a selection of a sport (paragraph 0016) and, in response to enquiries generated by the first computer means, information concerning his/her physiological profile (paragraph 0015), which is representative of his/her physiological abilities (paragraph 0015) and from this comparison formulates a training regime which is relayed to the sports person (generating a customized exercise program). *Gordon et al. does not disclose which has a database which stores for each of plurality of sports a record of an idealized physiological profile, wherein: each sports person using the system enters information*

to indicate the level at which he/she competes, from which the first computer means determines for the selected sport an idealized physiological profile of the sports person's nominal peers; and the first computer means compares the physiological profile input by each sports person with the idealized physiological profile of a nominal peer of the sport's person and from this comparison formulates a training regime which is relayed to the sports person. Gordon et al. does disclose a database for storing measurements and setting up a profile for each user (paragraph 0013), can be related to a sport person (abstract) and a customized exercise program may include a nutrition program portion (paragraph 0080). However, Petrus teaches having a database which stores for each of a plurality of health profiles a record of an idealized physiological profile (a health profile for a person of the consumer's age and health history background) and compares the physiological profile input by each person with the idealized physiological profile (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include storing ideal health profiles and having the ability to compare a person's health information to an ideal health profile, as disclosed by Petrus, incorporated into Gordon et al. so that an individual will be able to determine their nutritional needs in comparison to an ideal healthy person/profile. Basically, the individual is able to determine the nutritional needs needed to become more like the ideal healthy person/profile. *Gordon et al./Petrus does not teach each sports person using the system enters information to indicate the level at which he/she competes, from which the first computer means determines for the selected sport an idealized physiological profile of the sports person's nominal peers; and the first computer means*

compares the physiological profile input by each sports person with the idealized physiological profile a nominal peer of the sports person and from this comparison formulates a training regime which is relayed to the sports person. However, Yoo teaches each sports person using the system enters information to indicate the level at which he/she competes (Fig. 1: Expert training, Physical strength improvement, Fatness Management and/or Exercise Beginner & paragraphs 0013 & 0046), from which the first computer means determines for the selected sport an idealized physiological profile of the sports person's nominal peers (Figs. 1 & 2: target heart rate for a specific age group & paragraph 0032: the target zone); and the first computer means compares the physiological profile input by each sports person with the idealized physiological profile of the sport's person and from this comparison formulates a training regime which is relayed to the sports person (paragraphs 0012, 0019, 0033 & 0046). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the specifics of the sports person, as disclosed by Yoo, incorporated into Gordon et al./Petrus in order to control the exercise apparatus.

Referring to claim 46, Gordon et al., as modified by Petrus and Yoo, discloses wherein: the first computer is connected via a telecommunications network to a plurality of remotely located computer means (Fig. 1 & the associated text of Gordon et al.); and each sports person uses one of the plurality of remotely located computer means to input data to the first computer means via the telecommunications network (paragraph 0013 of Gordon et al.) and to receive enquiries (computer 110 of Gordon et al.) and the formulated training regime from the first computer means via the telecommunications

network (computer 110 & generated customized exercise program of Gordon et al.).

Referring to claim 47, Gordon et al., as modified by Petrus and Yoo, discloses wherein: the first computer means for each sports person scales the stored idealized physiological profile for the selected sport having regard to the weight of the sports person and compares the input physiological profile with the scaled identical physiological profile when formulating the training regime (paragraphs 0014 & 0080-0082 of Gordon et al.).

Referring to claim 48, Gordon et al. discloses wherein: the first computer means for each sports person scales the stored idealized physiological profile for the selected sport having regard to the gender of the sports person and compares the input physiological profile with the scaled idealized physiological profile when formulating the training regime (paragraph 0015 of Gordon et al.).

Referring to claim 49, Gordon et al., as modified by Petrus and Yoo, discloses wherein: the first computer means for each sports person scales the stored idealized physiological profile for the selected sport having regard to the age of the sports person and compares the input physiological profile with the scaled idealized physiological profile when formulating the training regime (paragraph 0015 of Gordon et al.).

Referring to claim 51, Gordon et al., as modified by Petrus and Yoo, discloses wherein: the training regime formulated by the first computer means comprises recommendations for training session frequency (paragraph 0019 of Gordon et al.).

Referring to claim 52, Gordon et al., as modified by Petrus and Yoo, discloses wherein:

the training regime formulated by the first computer means comprises recommendations for heart rate during training (paragraph 0018 of Gordon et al.).

Referring to claim 53, Gordon et al., as modified by Petrus and Yoo, discloses wherein: each sports person inputs periodically, in response to enquiries generated by the first computer means, data to establish a psychological profile for the sports person (paragraph 0015 of Gordon et al.); and the first computer means compares each input psychological profile for each sports person with a stored base psychological profile for the sports person (abstract of Petrus) and dependent on the comparison can modify the training regime formulated by the first computer means (paragraph 0019 of Gordon et al.).

Referring to claim 54, Gordon et al. discloses storing on a database on the first computer means an idealized physiological profile representative of physiological abilities of a nominal peer of the sports person for each of a plurality of levels of ability (Fig. 1, the associated text, paragraphs 015 & 0077-0079); first computer means for processing data (computer 110); wherein: each sports person using the system inputs a selection of a sport (paragraph 0016) and, in response to enquiries generated by the first computer means, information concerning his/her physiological profile (paragraph 0015) and from this comparison formulates a training regime which is relayed to the sports person (generating a customized exercise program). *Gordon et al. does not disclose which has a database which stores for each of plurality of sports a record of an idealized physiological profile, wherein: each sports person using the system enters information to indicate the level at which he/she competes, from which the first*

computer means determines for the selected sport an idealized physiological profile of a nominal peer of the sports person; and the first computer means compares the physiological profile input by each sports person with the idealized physiological profile of the sport's person's nominal peers and from this comparison formulates a training regime which is relayed to the sports person. Gordon et al. does disclose a database for storing measurements and setting up a profile for each user (paragraph 0013), can be related to a sport person (abstract) and a customized exercise program may include a nutrition program portion (paragraph 0080). However, Petrus teaches having a database which stores for each of a plurality of health profiles a record of an idealized physiological profile (a health profile for a person of the consumer's age and health history background) and compares the physiological profile input by each person with the idealized physiological profile (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include storing ideal health profiles and having the ability to compare a person's health information to an ideal health profile, as disclosed by Petrus, incorporated into Gordon et al. so that an individual will be able to determine their nutritional needs in comparison to an ideal healthy person/profile. Basically, the individual is able to determine the nutritional needs needed to become more like the ideal healthy person/profile. *Gordon et al./Petrus does not teach each sports person using the system enters information to indicate the level at which he/she competes, from which the first computer means determines for the selected sport an idealized physiological profile of the sports person's nominal peers; and the first computer means compares the physiological profile input by*

each sports person with the idealized physiological profile of a nominal peer of the sports person and from this comparison formulates a training regime which is relayed to the sports person. However, Yoo teaches each sports person using the system enters information to indicate the level at which he/she competes (Fig. 1: Expert training, Physical strength improvement, Fatness Management and/or Exercise Beginner & paragraphs 0013 & 0046), from which the first computer means determines for the selected sport an idealized physiological profile of a nominal peer of the sports person (Figs. 1 & 2: target heart rate for a specific age group & paragraph 0032: the target zone); and the first computer means compares the physiological profile input by each sports person with the idealized physiological profile of the sport's person's nominal peers and from this comparison formulates a training regime which is relayed to the sports person (paragraphs 0012, 0019, 0033 & 0046). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the specifics of the sports person, as disclosed by Yoo, incorporated into Gordon et al./Petrus in order to control the exercise apparatus.

Referring to claim 55, Gordon et al. discloses storing a database for each of a plurality of levels of ability (paragraphs 0077-0079); first computer means for processing data (computer 110) representative of physiological abilities of a nominal peer of the sports person (paragraph 0015); wherein each sports person using the system inputs, in response to enquiries generated by the first computer means, information concerning his/her physiological profile (paragraph 0015), the sport at which he/she competes (paragraph 0016); each sports person using the system can vary the pre-programmed

physiological profile for the relevant sport at the level at which the sports person competes by inputting a target or targets selected from options provided by the first computer means (paragraphs 0022-0050); and from this comparison formulates a training regime which is relayed to the sports person (generating a customized exercise program). *Gordon et al. does not disclose which has a database which stores a record of a pre-programmed physiological profile for each of the plurality of sports for each of a plurality of levels of ability, inputting information of the level at which he/she competes and the first computer means compares the physiological profile input by each sports person with the varied physiological profile selected by the sports person.* Gordon et al. does disclose a database for storing measurements and setting up a profile for each user (paragraph 0013), can be related to a sport person (abstract) and a customized exercise program may include a nutrition program portion (paragraph 0080). However, Petrus teaches having a database which stores a record of a pre-programmed physiological profile (a health profile for a person of the consumer's age and health history background) and compares the physiological profile input by each person with the varied physiological profile selected by the individual (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include storing ideal health profiles and having the ability to compare a person's health information to an ideal health profile, as disclosed by Petrus, incorporated into Gordon et al. so that an individual will be able to determine their nutritional needs in comparison to a pre-programmed healthy person/profile. Basically, the individual is able to determine the nutritional needs needed to become more like pre-programmed healthy

person/profile. *Gordon et al./Petrus does not teach inputting information of the level at which he/she competes.* However, Yoo teaches each sports person using the system enters information to indicate the level at which he/she competes (Fig. 1: Expert training, Physical strength improvement, Fatness Management and/or Exercise Beginner & paragraphs 0013 & 0046) It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the specifics of the sports person, as disclosed by Yoo, incorporated into Gordon et al./Petrus in order to control the exercise apparatus.

3. Claims 50 & 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al./Petrus/Yoo and further in view of Blau et al. (U.S. Patent Number 6,176,241).

Referring to claim 50, Gordon et al./Petrus/Yoo discloses a system as claimed in claim 45. *Gordon et al./Petrus/Yoo does not wherein: each stored record of an idealized physiological profile comprises measurements taken from the set of: maximum capacity to transport oxygen to tissues; percentage of maximum oxygen transport capacity that may be maintained without accumulation of lactate; greatest weight that can be lifted once; maximum power; maximum number of sit-ups performed without rest; maximum number of push-ups performed without rest; maximum number of crunches performed without rest; and local muscle endurance; and the first computer means generates enquiries relayed to the sports person which require data matching the measurements stored for the idealized physiological profile.* However, Blau et al. teaches wherein: each stored record of an idealized physiological profile comprises measurements taken

from the set of: maximum capacity to transport oxygen to tissues ($VO_2\text{max}$); percentage of maximum oxygen transport capacity that may be maintained without accumulation of lactate; greatest weight that can be lifted once; maximum power; maximum number of sit-ups performed without rest; maximum number of push-ups performed without rest; maximum number of crunches performed without rest; and local muscle endurance; and the first computer means generates enquiries relayed to the sports person which require data matching the measurements stored for the idealized physiological profile. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the measurements, as disclosed by Blau et al., incorporated into Gordon et al./Petrus/Yoo in order to formulate exercise regimens based on these measurements.

Referring to claim 56, Gordon et al./Petrus/Yoo discloses a system as claimed in claim 45. *Gordon et al./Petrus/Yoo does not wherein: wherein the physiological abilities are selected from a set including one or more of: maximal oxygen capacity; lactate threshold; maximum strength output; maximum power output; core strength measurements; and muscular endurance measurements.* However, Blau et al. teaches *wherein: wherein the physiological abilities are selected from a set including one or more of: maximal oxygen capacity ($VO_2\text{max}$); lactate threshold; maximum strength output; maximum power output; core strength measurements; and muscular endurance measurements.* It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the measurements, as disclosed by Blau et al., incorporated into Gordon et al./Petrus/Yoo in order to formulate exercise regimens based on these measurements.

Response to Arguments

4. Applicant's arguments filed 3/23/2009 have been fully considered but they are not persuasive. On page 13 of the Remarks the applicant argues that the cited prior art fails to disclose all the limitations found in the independent claims 45, 54 & 55. Namely comparing a physiological profile of a user to a physiological profile of the user or sports person's peers. However, the examiner disagrees with the applicant's assertion because some physiological components as mentioned on pages 32 & 33 of the originally filed specification consist of weight, age and gender. Petrus discloses the use of age & sex in column 2 line 67. As further reading column 2 lines 65-67. Petrus teaches comparing the individual's health information with standardized profiles based on age and sex just to name a few. The applicant continues to state that the only disclosure in Petrus of physiological information is using blood pressure in column 2 line 55. "However, it is noted that the blood pressure information I used to modify the dietary supplement profile. It does not use blood pressure in a comparison of profiles. Claims 45, 54 & 55 have been amended to bring out this distinction, by particularizing the physiological profile as being representative of the user's physiological abilities. Clearly, Petrus fails to disclose such a profile. The above point is moot for the mere fact that the originally filed disclosure mentions physiological components such as weight, sex and gender. By stating that, the examiner disagrees with the applicant's assumption because Gordon was used to disclose the limitations in paragraph 0015. See independent claims 45, 54 & 55 rejections above for further clarification. Next on page 14 of the Remarks, the applicant states that, "Turning not to the Yoo document,

the disclosure that a user should exercise within a target zone is not equivalent to a comparison of a user's physiological profile with the physiological profile of the user's nominal peers. Although the system dictates for a given level and a given age, what heart rate zone the user should work' in, there is not disclosure that this heart rate zone is compared in any way to a physiological profile of the user's nominal peers. The heart rate zone is merely the region in which a person is advised to train in, irrespective of the person's physiology." The examiner again disagrees with the applicant's assertion because the Yoo system dictates for a given level and a given age a recommended target heart rate zone. Based on the user's inputted information the target heart rate was determined. What the user inputted in comparison to the known target heart rate for a given level and age determines the target heart rate zone. The heart rate zone is not just a region in which a person is advised to train, irrespective the person's physiology because the heart rate zone is where the heart rate is recommended to stay, which obviously involves the heart which is a living organ in any person's physiology. Further, the applicant states that the Examiner has failed to provide a motivation that would lead a skilled person to consider modifying the system disclosed in Gordon in this way. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner has clearly provided motivation in the above rejections. Further, Gordon discloses in paragraph 0086 that additional modifications and changes may be made without departing from the spirit and scope of the present invention, as well as, allowing a user to generate an exercise program using a computer program, Petrus teaches in column 3 line 35-column 4 line 4 that a wide range of modifications, change and substitution is contemplated in the foregoing disclosure and in some instances, some features of the present invention may be employed without a corresponding use of the other features, and Yoo teaches in paragraph 0049 that these teachings can be readily applied to other types of devices and that many modifications and variations will be apparent to those skilled in the art. On page 15 of the Remarks, the applicant states that "it is by no means obvious that a comparison of physiological profiles will lead to a successful suggestion of a particular training scheme" and that "by no means clear how the skilled person would find motivation from the disclosure of Yoo to modify a step of comparing a profile of a sports person with an idealized profiled such that he arrives at a step of comparing a profile of sports person with a profiled of the sport's person's age group." and "therefore, it would have not be obvious to the skilled person to combine the disclosures of the cited prior art." Through the above analysis. The remarks and rejections the examiner has made addresses each of theses points.

Citation of Pertinent Prior Art

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ferriol et al. (U.S. Publication Number 2003/0129574) teaches a system, apparatus and method for maximizing effectiveness and efficiency of learning, retaining and retrieving knowledge and skills.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KESHA FRISBY whose telephone number is (571)272-8774. The examiner can normally be reached on Monday-Friday 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/XUAN M. THAI/
Supervisory Patent Examiner, Art Unit 3715

/K. F./
Examiner, Art Unit 3715